own default; nor will the rule exercise a restraining influence upon the trustee. The only possible basis for the rule is public policy; the argument being that to fully protect trust estates an assignee knowing the fiduciary position of his assignor, should be obliged to take the risk of a possible defalcation. It is submitted, however, that the policy of the situation should be clearly determined before fastening upon the assignee such a risk. In this case the policy is so doubtful that it offers no real justification for the rule.

The language of a recent Victoria case following the established English rule would make the rule even more comprehensive. *Cumming* v. *Austin*, 28 Vict. L. R 622. The court intimates that the assignee should be mulcted even where the assignment occurred before the assignor became trustee. The objections to the more restricted English rule here apply with even greater force. In addition, the argument of public policy fails entirely. For, even granting the rule as enforced in England, it would seem to be an unwarranted step to say that an assignee must be taken to have anticipated his assignor's becoming a trustee, and therefore to have assumed the risk of a future default. In addition, since every beneficiary may become a trustee, the existence of such a rule would seriously affect the freedom with which equitable interests might be transferred. The more restricted rule could only affect in that way the few cases of assignments by trustees. The one English decision on the point is contrary to the *dictum* in the principal case.[5] It is to be hoped that when the question arises for decision in the future, that *dictum* may be distinctly repudiated.

THE ALABAMA FRANCHISE CASE. — Much attention has been attracted by the decision in the United States Supreme Court of the case of the negroes who applied for relief from what they claimed was the unconstitutionality of the recent Alabama franchise provisions. *Giles* v. *Harris*, 189 U. S. 475. The case is rather inadequately reported, and as a consequence there has been some hesitation as to the exact scope of the decision. The Alabama constitution provides for the registration of all electors, upon qualification according to certain requirements. An examination of the record from the circuit court discloses that the plaintiff, for himself and five thousand other negroes of the same county in Alabama, brought a bill for equitable relief against the defendants, the county registrars. The plaintiff alleged that he and his fellows were qualified under the requirements of the franchise provisions, but that the defendants denied them the right to register; further, that the constitutional franchise provisions are in contravention of the fourteenth and fifteenth amendments of the federal Constitution: wherefore he asked a decree placing his name on the registration list and declaring the whole registration scheme unconstitutional. A demurrer by the defendants was sustained on two grounds: first, that there was no federal jurisdiction; second, that the facts alleged do not come within the cognizance of equity. The plaintiff appealed to the Supreme Court of the United States under the statute [1] which allows certain questions to be brought before that court on direct appeal, among these questions being federal jurisdiction, and the constitutionality of a state constitution. The question of federal jurisdiction

[5] Irby *v.* Irby, 25 Beav. 632.

[1] 26 St. c. 517, § 5, p. 827, 828.

only was certified to the Supreme Court. The court however decided that it could consider the case on both grounds of appeal. There were therefore only two questions before the court: (1) Does this bill present a case for federal jurisdiction? (2) Do the facts alleged call for equitable relief on the ground of the unconstitutionality of the franchise provisions? The first ground in the plaintiff's bill, — that he was denied registration although qualified according to the terms of the franchise law, — not being within the statute allowing direct appeals, was not before the court. With regard to federal jurisdiction, the court decided that, although there was no allegation in the bill that the matter involved at least $2,000,[2] since that fact was not taken advantage of in the court below, it could not be raised on appeal. It was then expressly assumed without decision that the case was in other respects [3] within the federal jurisdiction. The second question then remained. It was answered in the negative on the following three grounds: (1) Without discussion, that equity will not interfere to enforce a political right; (2) that precedent to granting the plaintiff's petition, the court would be obliged to declare unconstitutional the very franchise provisions under which the plaintiff asks to be registered; (3) that equity could not enforce its decree without policing the state to secure undiscriminating registration, which it cannot undertake to do.

While the first and third grounds for the court's decision are probably sound,[4] the second, on which the case was chiefly rested, is undoubtedly conclusive against the plaintiff. Under the statutory limitations of this appeal the court could only give relief by deciding that the registration scheme was unconstitutional. If, however, the provisions were unconstitutional, no one would have a right of registration. This plaintiff, therefore, would have no cause of action for the denial of registration, since there had been a violation of no right. On analysis, therefore, contrary to what might be thought, this case does not turn upon a question of constitutional law.

RECENT CASES.

ADVERSE POSSESSION — HOLDING UNDER DOWER RIGHT. — *Held*, that in the absence of a divestiture of her dower right, a widow's claim of ownership of land held in possession under such right is unavailing, of itself, to start the running of the statute of limitations as against the owner. *Allison* v. *Robinson*, 34 So. Rep. 966 (Ala.). For a discussion of the principles involved, see 14 HARV. L. REV. 149.

BANKRUPTCY — INVOLUNTARY PROCEEDINGS — ANSWER BY ATTACHING CREDITOR. — The Bankruptcy Act of 1898, after defining the term "creditor" as any one having a provable claim, provides that "creditors other than the original petitioners may . . . file an answer, and be heard in opposition to the prayer of the petition." *Held*, that an attaching creditor may contest the petition without surrendering his preference. *In re C. Moench & Sons Co.*, 123 Fed. Rep. 977 (Dist. Ct., W. D. N. Y.).

It has repeatedly been held that an attaching creditor cannot, without surrendering his preference, file a petition to have his debtor declared a bankrupt. *In re Burlington Malting Co.*, 109 Fed. Rep. 777; *In re Schenkein*, 113 Fed. Rep. 421. The principal

---

[2] Required for jurisdiction. 25 St. c. 866, § 1, p. 434.
[3] U. S. Comp. St. 1901, § 1979.
[4] Green *v.* Mills, 69 Fed. Rep. 852.